No. 11,737

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

MILO W. BEKINS and REED J. BEKINS as Trustees under the Last Will of Martin Bekins, Deceased,

Appellants,

vs.

COMPTON-DELEVAN IRRIGATION DISTRICT,

Appellee.

BRIEF FOR APPELLEE.

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Subject Index

Table of Authorities Cited

Cases

Codes

Rules

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BRIEF FOR APPELLEE.

STATEMENT OF FACTS.

The statement of facts set forth in the brief of appellants is essentially correct.

The final decree which was entered August 17, 1942, in the Compton-Delevan Irrigation District bankruptcy matter, provided that the dissenting bondholders present their bonds for surrender and receive the composition figure within a period of twelve months from the date of the decree, and in the event they were not presented within such period to the Registrar of the Court, they were forever barred from participating in the plan of composition or in the funds held in the Registry of the Court.

The appellants failed to present their bonds within one year of the date of the final decree; however, after the date of the final decree and after the date of the expiration of twelve months from the date of the final decree, they did seek to present their bonds and be paid.

This effort was in January, 1944, some five months after the time limit placed by the Court in its final decree on the bondholders' rights to present bonds and receive payment, but within six months of such limit.

At the time of appellants' request, the district did not have any of the money to effect the composition; the balance that had remained in the Registry of the Court after the final date fixed by the Court for presentation and payment had been forwarded by the Registrar of the Court to the Reconstruction Finance Corporation in Washington in pursuance of the Court's order contained in the final decree. (R. 36, Case No. 10,934.)

Because of the foregoing, appellee rejected the presentation of appellants' bonds and refused to pay to appellants the composition figure. Thereafter and upon August 18, 1944, appellants filed with the District Court a motion that appellants be permitted to surrender their bonds in $11,000.00 principal amount, and receive the composition figure therefor, namely, $2,200.00, and that the final decree be modified to that effect. (R. 38, Case No. 10,934.)

Thereafter and upon September 19, 1944, the District Court entered its order denying the motion of appellants to modify the terms of the final decree.

Thereafter, upon October 10, 1944, appellants appealed to this Court from the decision of the District Court; the matter being heard and considered, this Court upon the 11th day of December, 1945, reversed the decision of the lower Court and in its mandate stated:

> "That the order of the said District Court in this cause be, and hereby is reversed, with costs in favor of the appellants and against the appellee, and that this cause be, and hereby is remanded to the said District Court with directions to grant appellants' motion to modify the terms of the final decree." (R. 2, 3.)

Appellants' first motion to modify the final decree which this Court ordered granted as aforesaid, reads as follows:

"MOTION

> Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Martin Bekins, deceased, move the court for an order requiring the Compton-Delevan Irrigation District and the depositary to pay to movents $2200.00 upon surrender and deposit of $11,000 principal amount of bonds of Compton-Delevan Irrigation District, together with appurtenant unpaid coupons maturing January 2, 1932 and subsequent, being bonds 409, 410, 411, 413, 414, 415 of the original issue, and bonds R136, R137, R138, and R139 of the refunding issue, each of the par value of $1000 and, if necessary for that purpose, to modify the terms of the final decree and to extend the time thereof for the deposit of said bonds and if necessary for that purpose, to relieve movents from their default, if any herein,

and to grant them the right to appear and claim the payment provided by the Plan of Composition despite the provisions of the final decree. Said motion is made upon the annexed statement, affidavit, and (25) authorities." (Tr. 10,934, pp. 38-39.)

Appellee sought a writ of certiorari from the United States Supreme Court, which writ was denied.

Thereafter, as set forth above, this Court issued a writ of mandate to the District Court to modify the final decree. (R. 2, 3.)

In pursuance of rule 3 of the District Court rules, appellant presented to the District Court a proposed order modifying the final decree, and served a copy upon appellee. This proposed order reads as follows (Sup. Tr. 11,737, pp. 78-80):

"Proposed Order Granting Motion To Modify Final Decree

In this matter the Mandate of the United States Circuit Court of Appeals for the Ninth Circuit having come down directing this court to grant the motion of Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Martin Bekins, Deceased, for an order requiring the Compton-Delevan Irrigation District to pay said trustees $2200.00 upon surrender and deposit of $11,000 principal amount of bonds of said district, with appurtenant coupons, and to modify the terms of the final decree entered herein to extend the time for depositing said bonds and to relieve the said parties from their default, if any herein,

Now, therefore, upon application of said movents It Is Ordered, Adjudged and Decreed that the final decree entered herein August 17, 1942, be and the same is hereby modified to extend the time for deposit and surrender of said bonds as herein provided and that the said trustees may, within thirty (30) days after this order becomes final present to the Treasurer of Compton-Delevan Irrigation District, the petitioner herein, bonds numbers 409, 410, 411, 413, 414 and 415 of the original issue of bonds of said district, and bonds numbers R115, R136, R137, R138, and R139 of the Refunding issue of said District, each of the par value of $1000, together with appurtenant unpaid coupons maturing January 2, 1932, and subsequent, and upon such presentation and the surrender of said bonds and coupons, the said Compton-Delevan Irrigation District shall pay to the said trustees the sum of $2200.00 upon said bonds and coupons with deductions for missing coupons, if any be missing, as provided in the said final decree and in the interlocutory decree heretofore entered herein, and shall also pay to said trustees the sum of $161.60 costs taxed herein, or upon the failure of said Compton-Delevan Irrigation District, petitioner herein, to make such payment upon such presentation and surrender of said bonds and coupons the said trustees shall no longer be bound by the terms of the final decree or interlocutory decree herein, and the provisions of said decrees restraining them from pursuing their ordinary remedies upon said bonds in the State or Federal Courts shall be vacated and set aside and permission is granted to said trustees to take proceedings for the collection of said bonds

in full and enforcement of their rights thereon free from the restraint of the interlocutory and final decrees of this court in these proceedings."

Appellee objected to the form of the order, and the District Court struck from the "proposed order" the following (Tr. 11,737, pp. 5-6):

"and the provisions of said decrees restraining them from pursuing their ordinary remedies upon said bonds in the State or Federal Courts shall be vacated and set aside and permission is granted to said trustees to take proceedings for the collection of said bonds *in full* and enforcement of their rights thereon free from the restraint of the interlocutory and final decrees of this court in these proceedings."

STATEMENT OF THE CASE.

The statement of the case as set forth in appellants' brief is also essentially correct. The bonds of appellants were presented for payment and surrender and they were not paid within the thirty days limit set forth in the order modifying the final decree. On June 13, 1946, appellants made application to sue on the bonds for their full value. (R. 10-12).

The bonds owned by appellants were of a face value of $11,000.00; the composition figure under the plan of composition and as fixed in the interlocutory and final decrees, was $200.00 per $1,000.00 bond. At the composition figure appellants were entitled to $2,200.00.

In opposition to the application to sue appellee applied to the District Court for an order interpreting the order of the court modifying the final decree and in interpreting it the court interpreted it to mean and read as follows, to-wit:

> "Now, therefore, upon application of said movents, it is ordered, adjudged and decreed that the final decree entered herein August 17, 1942, be and the same is hereby modified to extend the time for deposit and surrender of said bonds as herein provided and that the said trustee may, within thirty (30) days after this order becomes final present to the Treasurer of Compton-Delevan Irrigation District, the petitioner herein, bonds numbers 409, 410, 411, 413, 414 and 415 of the original issue of bonds of said district, and bonds numbers R115, R136, R137, R138 and R139 of the refunding issue of said district, each of the par value of $1000, together with appurtenent unpaid coupons maturing January 2, 1932 and subsequent, and upon such presentation and the surrender of said bonds and coupons, the said Compton-Delevan Irrigation District shall pay to the said trustees the sum of $2200.00 upon said bonds and coupons with deductions for missing coupons, if any be missing, as provided in the said final decree and in the interlocutory decree heretofore entered herein, and shall also pay to said trustees the sum of $161.60 costs taxes herein, or upon the failure of said Compton-Delevan Irrigation District, petitioner herein, to make such payment upon such presentation and surrender of said bonds and coupons the said trustees shall no longer be bound by the terms of the final decree or interlocutory decree herein, excepting that

> they shall be bound by the composition figure determined by said decree to be the maximum figure the district is able to pay, to-wit, twenty cents on each dollar." (R. 39.)

Appellants' motion for leave to sue and appellee's motion for interpretation of the modifying order resulted in the court's decision and order denying appellants' motion for leave to sue and granting the motion of Compton-Delevan Irrigation District to interpret the final decree. (R. 50, 51.)

Previously the court had entered a preliminary order to the same effect; this order was upon April 24, 1947, and in which the court denied the petition of the Bekins' trustees to sue and granted the motion of Compton-Delevan Irrigation District to interpret the final decree, and in which also the court stated it was of the opinion that the district should pay to the Bekins' trustees counsel fees and costs in a reasonable sum and suggested that the respective parties arrange and agree upon such sum or submit it to the court upon affidavit. (R. 42-43.) The matter was submitted upon affidavits. The court, having considered the affidavits, upon June 19, 1947, entered its order that the district pay to the registry of the court the sum of $385.00 as and for a reasonable counsel fee and costs, and further stated that upon such sum being paid, the court would make its final order denying the Bekins leave to sue. The said sum of $385.00 was deposited with the registry of the District Court by the district upon June 25, 1947. (R. 54.)

feature of the interlocutory decree but could sue for the composition figure.

It is to be noted that the court deleted and struck from the proposed order presented by appellants the closing sentence which immediately followed the last quotation, and which sentence reads as follows:

> "* * * the provisions of said decrees restraining them from pursuing their ordinary remedies upon said bonds in the State or Federal Courts shall be vacated and set aside and permission is granted to said trustees to take proceedings for the collection of said bonds *in full* and enforcement of their rights thereon free from the restraint of the interlocutory and final decrees of this court in these proceedings."

The interlocutory enjoined outstanding bondholders, pending the final decree, from bringing legal proceedings. (R. 31, Case 10,934.)

The final decree provided that such holders who did not present their bonds within the time provided therein, be forever restrained and enjoined from asserting any claim and demand whatsoever therefor as against the petitioning district or its officers, or against the property situated therein or the owners thereof. (R. 37, Case No. 10,934.)

The order modifying final decree was entered January 25, 1946; appellants filed their motion for leave to sue on October 7, 1946; appellee filed its application for interpretation of the order modifying the final decree on November 14, 1946.

Unfortunately in the interim between the signing of the order modifying final decree and the time the proceedings of the parties were filed in October and November, Judge Martin I. Welsh, Judge of the District Court, who signed the modifying order became ill; he never again returned to the bench; thus the parties are without the benefit of Judge Welsh's clarification as to what he meant by the terms of the order. (R. 23.)

A. RULE 60 IS NOT A BAR TO APPELLEE'S APPLICATION.

Rule 60 of the Federal Rules of Civil Procedure is not a bar to the right of the district to have interpreted the modifying order of January 25, 1946.

Before considering the legal effect of Rule 60 we wish to point out the inconsistency of appellants' position.

The proceedings in case No. 10,934 and in Case No. 11,737 originated upon a motion by appellants for a modification of the final decree in the bankruptcy matter.

It is to be borne in mind that the final decree in bankruptcy was entered August 17, 1942 and the motion was made by appellants to modify on September 11, 1944 (R. 38-39, Case No. 10,934); thus the motion was made long after the expiration of the limitation period of six (6) months which now counsel seeks to invoke against appellee.

Again, the order modifying the final decree which is the subject matter of this proceeding, was entered

January 25, 1946, yet appellants did not file their application for leave to sue until October 7, 1946, considerably over six (6) months from the date of the final decree. The original final decree denied them the right to sue, and the order of modification denied them the right to sue for the full amount.

Appellants' application to sue is nothing more than an application to modify the final decree, inasmuch as the first order modifying the final decree did not give appellants the right to sue for the full amount; such application was made considerably after six months from the entry of the modifying order; hence if appellants wish to invoke Rule 60 against appellee, such Rule must, to be consistent, be invoked against appellant. This would leave the parties just where they were prior to the application of appellants to sue, and the application of the district for an interpretation by the court of the modifying order.

However, Rule 60 has not the effect appellants seek to give to it.

In *U. S. v. Klapprott,* 6 F. R. D. 450, decided February 7, 1947, a civil proceeding was instituted by the United States attorney to revoke an order admitting the defendant to citizenship and to cancel the certificate of naturalization issued thereon on the ground of fraud and illegality. The original complaint was filed on May 12, 1942. Summons and complaint were personally served on defendant May 14, 1942. The defendant failed to appear within the time prescribed by the summons, to-wit: Sixty days, and a default

judgment in conformity with the prayer of the complaint was entered on July 16, 1942; on January 7, 1947, five years later, the defendant filed a verified petition in the matter to open, vacate and set aside the default judgment entered. The authority of the court to grant relief was challenged under Rule 60 (B) of the Rules of Civil Procedure, 28 C. P. C. A. In other words, the petition being filed over six months, it was contended that it should be denied upon that ground, and upon the ground there is no discretionary power in the court to change such period of limitation.

The court, however, held that Rule 60 expressly excepts from its application the power of the court

> "To entertain an action to relieve a party from a judgment, order or proceeding."

The court states:

> "This exception, liberally interpreted, preserves the historic authority of the court to entertain either a bill of review or a bill in the nature of a bill of review in the proper case."

In the Klapprott action the court further states that the present "petition," notwithstanding its form, should be regarded as a bill of review, and further states that "We shall so regard it." The court, however, denied the petition not on the ground it was barred by Rule 60 but for two other reasons, first, the lack of ground sufficient to sustain it, and second, the unreasonable delay of the defendant in pursuing the remedy. The remedy, as stated above, was not sought until after five years after the judgment was entered.

In the instant case the district is not even seeking a review; all it applied for was to have the court interpret its order. Appellants' motion to sue would require a modification of the decree, and it might be well argued that Rule 60 would apply thereto, however, the district is not seeking a modification of the decree but a clarification of what the court meant.

B. CIRCUIT AND DISTRICT COURTS' INTENTION.

The District Court and the Circuit Court did not intend that the final decree should be modified to the extent as herein contended by appellants. Originally as stated above, Bekins filed an application with the District Court for permission to present their bonds and receive payment of the composition figure. The District Court, Judge Martin I. Welsh, presiding, dismissed the petition; appeal was taken to this court and this court ordered the District Court's order reversed, and the case remanded to the District Court with directions to grant appellants' motion.

Bekins v. Compton-Delevan, 150 F. (2d) 526.

The motion in the above case which this court ordered granted reads as follows (p. 38, Case No. 10,-934):

> "Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Martin Bekins, deceased, move the court for an order requiring the Compton-Delevan Irrigation District and the depositary to pay to movents $2200.00 upon surrender and deposit of $11,000 principal amount of bonds

> of Compton-Delevan Irrigation District, together with appurtenant unpaid coupons maturing January 2, 1932 and subsequent, being bonds 409, 410, 411, 413, 414, 415 of the original issue, and bonds R136, R137, R138 and R139 of the refunding issue, each of the par value of $1000 and, if necessary for that purpose, to modify the terms of the final decree and to extend the time thereof for the deposit of said bonds and, if necessary for that purpose, to relieve movents from their default, if any herein, and to grant them the right to appear and claim the payment provided by the Plan of Composition despite the provisions of the final decree. Said motion is made upon the annexed statement, affidavit and (25) authorities."

The motion was solely for the right to present bonds and receive payment; that is all this court ordered and anything more than that was neither contemplated nor ordered.

Judge Welsh originally dismissed appellants' motion; later under the order of this court he entered the modifying order of January 25, 1946 (R. 5-6) having first deleted therefrom the provision which would have granted appellants the right to take proceedings for the collection of said bonds in full, if upon presentation they were not paid within thirty days. *Judge Welsh in the first instance, believed the motion should have been denied; this court ordered the motion to be granted; appellants proposed an order modifying the final decree so that they could present their bonds and receive payment, and included therein a provision that if the bonds were not paid within thirty days after*

presentation, appellants could sue for their bonds in full. Judge Welsh deleted this provision. Thus it is apparent that Judge Welsh did not intend to give to appellants the right, in the event the bonds were not paid within thirty days after presentation, to sue for the amount thereof in full. It was never the intention of this court in the Bekins case, nor of the District Court, that the appellants could sue for the bonds in full; the order as finally signed merely granted the right to appellants to collect the composition figure, without being bound by the terms of the final and interlocutory decrees enjoining them from suing for such composition figure.

C. APPELLANTS ARE ESTOPPED FROM ATTACKING COURT'S ORDER.

Appellants are estopped from invoking Rule 60 and in attacking the final order of the court denying appellants the right to sue.

Appellants in the Bekins case, No. 10,934, made their motion to modify the final decree long after six months after the final decree had become final. The final decree became final August 17, 1943. The Bekins filed their motion to modify the final decree on August 18, 1944, just one year and one day after the final decree became final.

The order modifying the final decree was made January 25, 1946. Appellants filed their application for leave to sue on October 7, 1946, eight months and a

> of Compton-Delevan Irrigation District, together with appurtenant unpaid coupons maturing January 2, 1932 and subsequent, being bonds 409, 410, 411, 413, 414, 415 of the original issue, and bonds R136, R137, R138 and R139 of the refunding issue, each of the par value of $1000 and, if necessary for that purpose, to modify the terms of the final decree and to extend the time thereof for the deposit of said bonds and, if necessary for that purpose, to relieve movents from their default, if any herein, and to grant them the right to appear and claim the payment provided by the Plan of Composition despite the provisions of the final decree. Said motion is made upon the annexed statement, affidavit and (25) authorities."

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The order modifying the final decree was made January 25, 1946. Appellants filed their application for leave to sue on October 7, 1946, eight months and a

half after the order had become final. The district filed its application to have interpreted the order modifying the final decree on November 14, 1946.

The application of the district, was not, in and of itself to modify the final decree but merely asked the court to interpret its meaning, which interpretation was necessary in view of appellants' motion for leave to sue. However, appellants' motion would require a modification of the final decree by reason of the fact that in the original order the District Court refused to grant permission to sue for the bonds in full, and struck the clause which would have given such permission, therefrom.

In addition it seems apparent that appellants accepted the final order of the District Court denying appellants' motion for leave to sue and granting the district's application for an interpretation of the modifying order, for in a preliminary order the court ordered that there should be paid to the appellants by the district three hundred eighty-five dollars as and for attorney fees and costs in the present proceedings, which sum was deposited by appellees with the registrar on June 25, 1947. On July 16, 1947, the registrar paid to Milo W. Bekins, one of appellants, the said sum of three hundred eighty-five dollars, which said Milo W. Bekins kept and did not return to the registry until September 30, 1947. (R. 67.)

For the reasons above appellants are estopped from invoking Rule 60, and further estopped by accepting the benefit of the court's order denying leave to sue

and granting the district's application by accepting and retaining from July 16, 1947 to September 30, 1947, the three hundred eighty-five dollars ordered paid by the court to Bekins before the court would enter its final order denying the motion to sue and granting the application for interpretation.

D. EQUITIES.

The evidence in this case consists primarily of affidavits. In drawing affidavits the writer has always found that if, at a later date, they were to be redrawn, they might have been more full than when originally prepared. However, the affidavits as set forth in the record are quite full and complete. The affidavit of Jerome D. Peters (R. 15-25) we believe set forth in full the equities of the district and the reasons why equity required the court to make its order denying appellants' petition and granting the district's application; this affidavit is augmented by a further affidavit of Jerome D. Peters found in the record (R. 26-30). We earnestly call the court's attention to these affidavits, and deem it not necessary to repeat here all that is contained in them.

The district, when the order of January 24, 1947 was made, did not have the money to pay the composition figure. (R. 17, 18.)

Irrigation districts levy assessments each year in September for money required for the ensuing fiscal year. (California Water Code, Sections 25,500-25,656.)

When the Bekins presented their bonds March 25, 1946, the district did not have the funds to pay the same, but immediately sought to borrow the money from the Reconstruction Finance Corporation, which on April 4, 1946 wrote the secretary that the district might make application to borrow the money, and if granted the Reconstruction Finance Corporation would require that judgment be assigned to it and the district would have to agree to make annual levies within specified years, not to exceed four, to repay the Reconstruction Finance Corporation. On May 4, 1946, the district passed a resolution to borrow the money from the Reconstruction Finance Corporation; on May 24, 1946, the Reconstruction Finance Corporation suggested the district request either a new loan or have permission to use the District Bond Reserve fund. The Bond Reserve fund is a fund set aside for the purpose of the agreement between the District and the Reconstruction Finance Corporation whereby the Reconstruction Finance Corporation agreed to advance the money to the District to effect its composition with its creditors, and wherein the district agreed to issue new bonds in the amount of money so advanced, which bonds have been issued and delivered to the Reconstruction Finance Corporation; said agreement also provided that the district should build up a Bond Reserve fund to take care of the new bonds, principal and interest, in the sum of $4500.00, to be built up at the rate of $900.00 per annum, until it reached the sum of $4500.00 and thereafter to be held at such figure until the bonds are paid. On May 24,

1946 there were $3700.00 in said Bond Reserve fund, but under the agreement of the district with the Reconstruction Finance Corporation this fund could be used for no other purpose than the one specified in the aforesaid agreement. This letter was from the Kansas City office of the Reconstruction Finance Corporation and stated upon receipt of a report from the district indicating it would consent to the conditions outlined, that the Reconstruction Finance Corporation would transmit the matter to its Washington, D. C. headquarters for appropriate action. That at the next meeting of the Board of Directors of the District held July 14, 1946, the entire Board of Directors stated it was resigning, and suggested the matter be left for the determination of the new board; that at the time the board of the district comprised E. E. Saal, James Mills, Jr., and Hugh Baber; upon the 8th day of July 1946 E. E. Saal and James Mills, Jr. resigned leaving only one director, Hugh Baber; that said Compton-Delevan Irrigation District is situated in the County of Colusa, State of California and no land owners reside within the district and under the law the directors are appointed by the Board of Supervisors. Upon August 1, 1946, the Board of Supervisors appointed N. C. Post and Robert M. Smith in the place of the two who had resigned. On August 1, 1946 the Board of Supervisors appointed W. Knowles as a director in place of Robert M. Smith who had not accepted the appointment. That upon October 22, 1946, the said N. C. Post and W. Knowles filed official bonds required by law and took their oaths of office, and the

first meeting of the board since the June 19, 1946 meeting was held November 6, 1946. (R. 20, 21, 22.) That upon November 14, 1946 the district deposited with the Registrar of the District Court the sum of $2200.00, being the sum due the Bekins; that on July 24, 1946, the Washington, D. C. office of the Reconstruction Finance Corporation communicated with the district, suggesting that the district, through its secretary, inform the Reconstruction Finance Corporation to the effect that the district would consent to the terms and conditions outlined in its said letter of May 24, 1946. On July 24, 1946 there was no Board of Directors of the District, and no one with authority to deal with the Reconstruction Finance Corporation and there was no one in authority until two members were appointed and qualified on October 22, 1946.

The composition figure in the Compton-Delevan Bankruptcy matter was twenty cents upon the dollar. All but a few accepted the composition figure; the Bekins trustees were of those who did not present their bonds. They brought suit to have the final decree amended so they might present their bonds and be paid their money. This suit went through the Courts. The Bekins trustees finally prevailed, this court stating that in equity the composition money to be paid for the bonds was not legally the District's but was equitably the Bekins'; the District Court amended the final decree to conform to the order of this court. To now give the Bekins the right to recover the full value of the bonds would be giving them a preference which would not be in accord with equity; all other bond-

holders who had accepted the settlement figures surely ought to be entitled to the full face value of their bonds if the Bekins are. The fundamental rule in bankruptcy matters is that no creditor be given a preference. The Bekins prevailed on equitable principles, otherwise, if the decision was made on wholly legal principles they would not have prevailed. The Bankruptcy Court is an equitable court, and should consider all the facts and circumstances. The Bekins money is in the hands of the Registrar of the District Court; all they need to do is to present their bonds and accept their money.

This court in pursuance of principles of equity ordered a final decree in bankruptcy to be amended to permit the Bekins to present their bonds and secure the composition money; here the Bekins are not pursuing principles of equity in demanding they be paid at full face value of the bonds and the decision herein should be guided and decided upon the same equitable principles that were involved when the Bekins made their order.

CONCLUSION.

The $2200.00 to which the Bekins trustees are entitled, is on deposit in the registry of the District Court, and under the order of the court will be delivered to the Bekins trustees upon their presenting for cancellation their bonds.

Also, there is in the registry the $385.00 ordered by the District Court to be paid to the Bekins for at-

torney fees and costs, which likewise awaits their calling for same.

It is respectfully submitted that the order of the lower court be affirmed, and thus bring to an end this litigation.

Dated, Chico, California,
March 29, 1948.

Respectfully submitted,
PETERS AND PETERS,
Attorneys for Appellee.